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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Adam Josiah Curtis,

No. CV-18-02846-PHX-JAT

10 Plaintiff,

ORDER

11 v.

12 Angela Marquez, Fraternal Order of Police,
13 and Phoenix Police Department,

14 Defendants.

15 Pending before the Court is Plaintiff's application to proceed in forma pauperis.
16 (Doc. 2). The application will be granted. In 28 U.S.C. § 1915(e)(2),

17 Congress provided with respect to in forma pauperis cases that a
18 district court "shall dismiss the case at any time if the court determines"
19 that the "allegation of poverty is untrue" or that the "action or appeal" is
20 "frivolous or malicious," "fails to state a claim on which relief may be
21 granted," or "seeks monetary relief against a defendant who is immune
22 from such relief." 28 U.S.C. § 1915(e)(2). While much of section 1915
23 outlines how prisoners can file proceedings in forma pauperis, section
24 1915(e) applies to all in forma pauperis proceedings, not just those filed by
25 prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) ("section
26 1915(e) applies to all in forma pauperis complaints"). "It is also clear that
27 section 1915(e) not only permits but requires a district court to dismiss an
28 in forma pauperis complaint that fails to state a claim." *Id.* Therefore, this
court must dismiss an in forma pauperis complaint if it fails to state a claim
or if it is frivolous or malicious.

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30 A claim must be stated clearly enough to enable a defendant to
31 frame a responsive pleading. A complaint must contain "a short and plain
32 statement of the claim showing that the pleader is entitled to relief." Fed.
33 R. Civ. P. 8(a). "Each averment of a pleading shall be simple, concise, and
34 direct." Fed. R. Civ. P. 8(e)(1). A complaint having the factual elements of
35 a cause of action present but scattered throughout the complaint and not
36 organized into a "short and plain statement of the claim" may be dismissed
37 for failure to satisfy Rule 8(a). *Sparling v. Hoffman Constr. Co.*, 864 F.2d
38 635, 640 (9th Cir. 1988).

1 *Kennedy v. Andrews*, 2005 WL 3358205, *2-*3 (D. Ariz. 2005).

2 In this case, Plaintiff appears to be complaining about actions Defendant Angela
3 Marquez took in a child custody proceeding in California and about the Phoenix police
4 refusing to file a report about an alleged car accident and an alleged poisoning. With
5 respect to the Fraternal Order of Police, Plaintiff states (quoted in its entirety) “I believe
6 the Fraternal Order of Police nationwide had [sic] helped to foster this system of care and
7 concern over the Marquez’ interests.” (Doc. 1 at 2).

8 Having reviewed the complaint, the Court finds that the claims against Angela
9 Marquez are either frivolous or malicious. *See* 28 U.S.C. § 1915(e)(2). Moreover, this
10 Court does not sit as an appellate court over the California state courts. *Exxon Mobil*
11 *Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-284 (2005) (“The *Rooker-*
12 *Feldman* doctrine [requires the federal court to dismiss for want of subject matter
13 jurisdiction] cases brought by state-court losers complaining of injuries caused by state-
14 court judgments rendered before the district court proceedings commenced and inviting
15 district court review and rejection of those judgments.”).

16 Next, with respect to the Phoenix Police Department, the department is not a jural
17 entity that can sue and be sued and, thus, is not a proper defendant. *See Gotbaum v. City*
18 *of Phoenix*, 617 F. Supp. 2d 878, 886 (D. Ariz. 2008) (...“the Court concludes that the
19 Phoenix Police Department is a subpart of the City of Phoenix, not a separate entity for
20 purposes of suit.”).

21 Finally, the single claim against the Fraternal Order of Police is too vague to state
22 a claim. *See Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007). Moreover, it
23 appears to be fanciful or delusional. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989)
24 (“As the Courts of Appeals have recognized, § 1915(d)’s term ‘frivolous,’ when applied
25 to a complaint, embraces not only the inarguable legal conclusion, but also
26 the fanciful factual allegation.”).

27 Thus, the complaint in this case will be dismissed without prejudice as to each
28 defendant for the reasons stated above. Plaintiff will be given an opportunity to amend

1 the complaint. If the amended complaint does not cure these deficiencies, this case will
2 be dismissed consistent with 28 U.S.C. § 1915(e).

3 As a result,

4 **IT IS ORDERED** that the application to proceed in forma pauperis (Doc. 2) is
5 granted.

6 **IT IS FURTHER ORDERED** that the complaint is dismissed, without prejudice.
7 Plaintiff has 30 days to file an amended complaint. If no amended complaint is filed in
8 30 days, the Clerk of the Court shall dismiss this case, with prejudice, and enter judgment
9 accordingly.

10 Dated this 19th day of September, 2018.

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14 James A. Teilborg
15 Senior United States District Judge
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